

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL GUTIERREZ,

Plaintiff,

v.

DAVID CORT, et al.,

Defendants.

CASE NO. C10-1072Z

ORDER

THIS MATTER comes before the Court on the motion to dismiss, docket no. 24, filed by defendant Precision Engines, LLC (“Precision”). Precision moves to dismiss plaintiff’s amended complaint, docket no. 24, for insufficiency of service of process under Fed. R. Civ. P. 12(b)(5), and for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Plaintiff submitted a certificate of service of process indicating that he served the summons and complaint on “Precision Air” via the United Parcel Service. Cert. of Serv. at 3, 8, docket no. 29. Plaintiff has not served the summons

01 and complaint on the correct entity. Moreover, plaintiff has failed to follow the proper procedure  
02 for effecting service by mail. See Fed. R. Civ. P. 4(e)(1) (authorizing service of process in any  
03 manner provided by state law); Wash. Sup. Ct. Civ. R. 4(d)(4) (permitting service by mail in  
04 limited circumstances that would otherwise justify service by publication under RCW  
05 4.28.100-.110, provided the plaintiff complies with certain requirements and obtains Court  
06 approval).

07  
08 Generally, a plaintiff must serve the defendant with copies of the summons and complaint  
09 within 120 days after filing the complaint. Fed. R. Civ. P. 4(m). For a defendant added as a party  
10 by an amended complaint, the 120-day deadline commences after filing of the amended complaint.  
11 See McGuckin v. United States, 918 F.2d 811, 813 (9th Cir. 1990) (holding that the 120-day  
12 deadline for serving the summons and complaint found in Fed. R. Civ. P. 4(m)<sup>1</sup> restarts as to a  
13 defendant first added as a party by an amended complaint). Here, plaintiff filed his amended  
14 complaint on January 21, 2011. Am. Compl., docket no. 24. As such, under Rule 4(m), plaintiff  
15 has until May 21, 2011 to properly serve Precision with the summons and complaint. However, in  
16 light of plaintiff's pro se status, and the leniency generally afforded to pro se litigants, the Court  
17 GRANTS plaintiff an additional sixty days, until **July 20, 2011**, to serve Precision with signed and  
18 completed copies of the summons and amended complaint, consistent with the requirements of Fed.  
19 R. Civ. P. 4.  
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22 <sup>1</sup> McGuckin was decided under a prior version of the rule, when the 120-day deadline was originally found in subsection j. See  
Fed. R. Civ. P. 4(j) (1990).

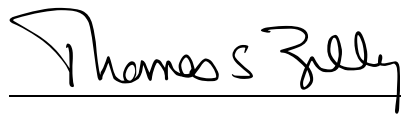
01 The Court ORDERS plaintiff to file proof of service of the summons and complaint no later  
02 than **July 21, 2011**. The Court advises plaintiff that if he fails to timely serve Precision with the  
03 summons and amended complaint, consistent with the requirements of Rule 4, or fails to file timely  
04 proof of such service, the Court will grant Precision's motion, and dismiss plaintiff's remaining  
05 claims.

06 Pending plaintiff's compliance with the Court's Order to effect service, the Court DEFERS  
07 ruling on Precision's motion to dismiss, docket no. 34, and RENOTES the motion for consideration  
08 on July 22, 2011. The parties shall file no further briefing or evidence in connection with the  
09 deferred motion unless requested by the Court.

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11 The Court further RENOTES plaintiff's motion for mediation, docket no. 39, for  
12 consideration on July 22, 2011. The Clerk is directed to send copies of this Minute Order to all  
13 counsel of record and to plaintiff pro se.

14 IT IS SO ORDERED.

15 DATED this 10th day of May, 2011.

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18 Thomas S. Zilly  
19 United States District Judge  
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